



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 70**

**[EPA-R04-OAR-2018-0296; FRL-9987-13-Region 4]**

**Air Plan and Operating Permit Program Approval: AL, GA and SC;**

**Revisions to Public Notice Provisions in Permitting Programs**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of State Implementation Plan (SIP) revisions and the Title V Operating Permit Program revisions submitted on May 19, 2017, by the State of Alabama, through the Alabama Department of Environmental Management (ADEM); submitted on November 29, 2017, by the State of Georgia, through the Georgia Environmental Protection Division (Georgia EPD); and submitted on September 5, 2017, by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC). These revisions address the public notice rule provisions for the New Source Review (NSR) and Title V Operating Permit programs (Title V) of the Clean Air Act (CAA or Act) that remove the mandatory requirement to provide public notice of a draft air permit in a newspaper and that allow electronic notice (“e-notice”) as an alternate noticing option. EPA is approving these revisions pursuant to the CAA and implementing federal regulations.

**DATES:** This rule is effective **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2018-0296. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kelly Fortin of the Air Permitting Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Fortin can be reached by telephone at (404) 562-9117 or via electronic mail at [fortin.kelly@epa.gov](mailto:fortin.kelly@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In a notice of proposed rulemaking (NPRM) published on August 10, 2018 (83 FR

39638), EPA proposed to approve the portions of Alabama's May 19, 2017, Georgia's November 29, 2017, and South Carolina's September 5, 2017, SIP revisions and the Title V program revisions addressing the public notice requirements for CAA permitting. The details of Alabama's, Georgia's, and South Carolina's submittals and the rationale for EPA's actions are explained in the NPRM and briefly summarized below. The comment period for the proposed rule closed on September 10, 2018, and EPA did not receive any adverse comments.

On October 5, 2016, EPA finalized revised public notice rule provisions for the NSR, Title V, and Outer Continental Shelf permitting programs of the CAA. *See* 81 FR 71613 (October 18, 2016). These rule revisions remove the mandatory requirement to provide public notice of a draft air permit through publication in a newspaper and allow for internet e-notice as an option for permitting authorities implementing their own EPA-approved SIP rules and Title V rules, such as the Alabama, Georgia, and South Carolina EPA-approved programs. Permitting authorities are not required to adopt e-notice. Nothing in the final rules prevents a permitting authority of an EPA-approved permitting program from continuing to use newspaper notification and/or from supplementing e-notice with newspaper notification and/or additional means of notification. When e-notice is provided, EPA's rule requires electronic access (e-access) to the draft permit. Generally, state and local agencies intend to post the draft permits and public notices in a designated location on their agency websites. For the noticing of draft permits issued by permitting authorities with EPA-approved programs, the rule requires the permitting authority to use "a consistent noticing method" for all permit notices under the specific permitting program.

Alabama revised Chapter 335-3-14, *Air Permits* and Chapter 335-3-15, *Synthetic Minor*

*Operating Permits*, and Chapter 335-3-16, Major Source Operating Permits, to incorporate EPA's amendments to the federal public notice regulations discussed above.

Georgia revised Rule 391-3-1-.02(7)(a)1, *Prevention of Significant Deterioration of Air Quality*, and Rule 391-3-1-.03(10), *Title V Operating Permits*, of Georgia's *Rules for Air Quality Control, Chapter 391-3-1*, to incorporate EPA's amendments to the federal public notice regulations, as discussed above.

South Carolina revised Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, and Regulation 61-62.70, *Title V Operating Permit Program* of the South Carolina *Air Pollution Control Regulations and Standards*, to incorporate EPA's amendments to the federal public notice regulations discussed above.

## **II. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Alabama's Chapter 335-3-14, "Air Permits" at 335-3-14-.01, .04, and .05 and Chapter 335-3-15 "Synthetic Minor Operating Permits" at 335-3-15-.05, which address the public notice rule provisions for the NSR program, state effective December June 9, 2017; Georgia Rule 391-3-1-.02(7), *Prevention of Significant Deterioration of Air Quality*, which addresses the public notice rule provisions for the NSR program, state effective July 20, 2017; and South Carolina Regulation 61-62.5, Standard No. 7, "Prevention of Significant Deterioration," which address the

public notice rule provisions for the NSR program, state effective August 25, 2017.<sup>1</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>2</sup>

### **III. Final Action**

EPA is approving the portions of Alabama’s May 19, 2017, Georgia’s November 29, 2017, and South Carolina’s September 5, 2017, SIP revisions and the Title V program revisions addressing the public notice requirements for CAA permitting. EPA has concluded that the States’ submissions meet the plan revisions requirements of CAA section 110 and the SIP requirements of 40 CFR 51.161, 51.165, and 51.166, as well as the public notice and revisions requirements of 40 CFR 70.4 and 70.7.

### **IV. Statutory and Executive Order Reviews**

In reviewing SIP and Title V submissions, EPA’s role is to approve such submissions, provided that they meet the criteria of the CAA and EPA’s implementing regulations. These actions merely approve state law as meeting Federal requirements and do not impose additional

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<sup>1</sup> EPA is taking this opportunity to make administrative corrections to the entries in the “Explanation” columns in 40 CFR 52.50(c) for Alabama Rule 335-3-14-.04; 40 CFR 52.570(c) for Georgia Rule 391-3-1-.02(7); and 40 CFR 52.2120(c) for South Carolina Regulation 61-62.5, Standard No. 7 to more clearly reflect the federally-approved versions of these rules in the states’ respective SIPs.

<sup>2</sup> See 62 FR 27968 (May 22, 1997).

requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because the actions are not significant under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIPs subject to these actions, with the exception of the South Carolina SIP, are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules regarding SIPs do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law. With respect to the South Carolina SIP, EPA notes that the Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina, and pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, “all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” Thus, the South Carolina SIP applies to the Catawba Reservation; however, because the action related to South Carolina is merely modifying public notice provisions for certain types of air permits issued by SC DHEC, EPA has determined that there are no substantial direct effects on the Catawba Indian Nation. EPA has also determined that the action related to South Carolina’s SIP will not impose any substantial direct costs on tribal governments or preempt tribal law.

Furthermore, the rules regarding Title V Operating Permit programs do not have tribal implications because they are not approved to apply to any source of air pollution over which an Indian Tribe has jurisdiction, nor will these rules impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).



**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

**List of Subjects in 40 CFR Part 70**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating Permits, Reporting and recordkeeping requirements.

Dated: November 15, 2018.

Onis “Trey” Glenn, III  
Regional Administrator,  
Region 4.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart B – Alabama**

2. Section 52.50(c) is amended by:

- a. Revising under the heading “Chapter No. 335-3-14 Air Permits” the entries for “Section 335-3-14-.01”, “Section 335-3-14-.04”, “Section 335-3-14-.05”; and
- b. Revising under the heading “Chapter No. 335-3-15 Synthetic Minor Operating Permits” the entry for “Section 335-3-15-.05”

The revisions read as follows:

**§ 52.50 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA Approved Alabama Regulations**

State citation	Title/subject	State effective date	EPA approval date	Explanation
<p style="text-align: center;">* * * * *</p> <p style="text-align: center;"><b>Chapter No. 335-3-14 Air Permits</b></p>				
Section 335-3-14-.01	General Provisions	6/9/2017	[Insert date of publication in <u>Federal Register</u> [Insert citation of publication]	

* *	* *	*	*	*
Section 335-3-14-.04	Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration Permitting (PSD))	6/9/2017	<p>[Insert date of publication in <u>Federal Register</u>]</p> <p>[Insert citation of publication]</p>	<p>Except for changes to 335-3-14-.04(2)(g)2. and the addition of 335-3-14-.04(2)(bbb), state effective May 29, 2012, which EPA proposed to approve on August 24, 2017.</p> <p>Except for changes to 335-3-14-.04(2)(w)1., state effective July 11, 2006, which lists a 100 ton per year significant net emissions increase for regulated NSR pollutants not otherwise specified at 335-3-14-.04(2)(w).</p> <p>Except for the significant impact levels at 335-3-14-.04(10)(b) which were withdrawn from EPA consideration on October 9, 2014.</p>

Section 335-3-14-.05	Air Permits Authorizing Construction in or Near Nonattainment Areas	6/9/2017	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	With the exception of: The portion of 335-3-14-.05(1)(k) stating “excluding ethanol production facilities that produce ethanol by natural fermentation”; and 335-3-14-.05(2)(c)3 (addressing fugitive emission increases and decreases). Also with the exception of the state-withdrawn elements: 335-3-14-.05(1)(h) (the actual-to-potential test for projects that only involve existing emissions units); the last sentence at 335-3-14-.05(3)(g), stating “Interpollutant offsets shall be determined based upon the following ratios”; and the NNSR interpollutant ratios at 335-3-14-.05(3)(g)1-4.
<b>Chapter No. 335-3-15 Synthetic Minor Operating Permits</b>				
* *	* *	*	*	*
Section 335-3-15-.05	Public Participation	6/9/2017	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
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**Subpart L–Georgia**

3. Section 52.570(c) is amended in the table by revising the entry for “391-3-1-.02(7)” to read as follows:

**§ 52.570 Identification of plan.**

\* \* \* \*

(c) \* \* \*

EPA-Approved Georgia Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
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391-3-1-.02(7)	Prevention of Significant Deterioration of Air Quality (PSD)	7/20/2017	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	Except 391-3-1-.02(7)(a)(2)(iv). See March 4, 2016 publication. The version of Georgia Rule 391-3-1-.02(7) in the SIP does not incorporate by reference: (1) The provisions amended in the Ethanol Rule to exclude facilities that produce ethanol through a natural fermentation process from the definition of “chemical process plants” in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t), or (2) the provisions at 40 CFR 52.21(b)(2)(v) and (b)(3)(iii)(c) that were stayed indefinitely by the Fugitive Emissions Interim Rule, see March 30, 2011 publication.
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#### Subpart PP–South Carolina

4. Section 52.2120(c), is amended in the table under “Regulation No. 62.5 Air Pollution Control Standards” by revising the entry for “*Standard No. 7*” to read as follows:

#### §52.2120 Identification of plan.

\* \* \*

(c) \* \* \*

Air Pollution Control Regulations for South Carolina

State citation	Title/subject	State effective date	EPA approval date	Explanation
** Regulation No. 62.5	**	*	*	*

<i>Standard No. 7</i>	Prevention of Significant Deterioration	8/25/2017	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	<p>EPA did not take action on the version of Regulation 61-62.5, Standard No. 7, paragraph (b)(32)(i)(a) state effective on December 27, 2013, included in a SIP revision submitted by the State on April 10, 2014, because this version contains changes to a phrase regarding ethanol production facilities that is not in the SIP. South Carolina submitted a SIP revision on April 14, 2009, that includes the phrase “except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,” as amended in the Ethanol Rule (May 1, 2007), at Standard No. 7, paragraphs (b)(32)(i)(a), (b)(32)(iii)(b)(t), and (i)1(vii)(t) and at Standard No. 7.1, paragraphs (c)7(C)(xx) and (e)(T). EPA has not taken action to approve that portion of the April 14, 2009, SIP revision and incorporate this phrase into the SIP. The version of Standard No. 7, paragraphs (b)(32)(i)(a), (b)(32)(iii)(b)(t), and (i)1(vii)(t) and Standard No. 7.1, paragraphs (c)(7)(C)(xx) and (e)(T) was state effective on June 24, 2005 and conditionally approved by EPA on June 2, 2008, and were fully approved on June 23, 2011. Except Regulation 61-62.5, Standard No. 7(b)(30)(v) and (b)(34)(iii)(d), state</p>
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## **PART 70—STATE OPERATING PERMIT PROGRAMS**

5. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

6. Amend appendix A to part 70 by:

- a. Adding paragraph (a)(3) under the heading “Alabama”;
- b. Adding paragraph (d) under the heading “Georgia”; and
- c. Adding paragraph (d) under the heading “South Carolina”.

The additions read as follows:

### **Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs**

\* \* \* \* \*

#### *Alabama*

(a) \* \* \*

(3) Revisions to Alabama Chapter 335-3-16-.15(4), submitted on May 19, 2017, to allow for electronic noticing of operating permits, are approved on November 15, 2018.

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#### *Georgia*

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(d) Revisions to Georgia Rule 391-3-1-.03(10) submitted on November 29, 2017, to allow for electronic noticing of operating permits, are approved on November 15, 2018.

\* \* \* \* \*

*South Carolina*

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(d) Revisions to South Carolina Regulation 61-62.70, submitted on September 5, 2017, to allow for electronic noticing of operating permits, are approved on November 15, 2018.

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[FR Doc. 2018-26247 Filed: 12/13/2018 8:45 am; Publication Date: 12/14/2018]